

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

AMERICAN POSTAL WORKERS UNION,
SAN FRANCISCO LOCAL, AFL-CIO

and

Case 20-CB-62958

RON LEMMONS, An Individual

Lucile Lannan Rosen, Esq., San Francisco, CA,
for the General Counsel.

Bob Williamson, American Postal Workers Union,
San Francisco Local, San Francisco, CA,
for the Respondent.

Rondol Lemmons, an Individual, San Francisco, CA,
Charging Party in Pro se.

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in San Francisco, California on January 19, 2012. The charge in the captioned matter was filed by Ron Lemmons, an Individual (Lemmons), on August 13, 2011¹ and an amended charge was filed by Lemmons on October 25, 2011. Thereafter, on October 31, 2011 the Regional Director for Region 20 of the National Labor Relations Board (Board) issued a complaint and notice of hearing alleging violations by American Postal Workers Union, San Francisco Local, AFL-CIO, (Respondent or Union) of Section 8(a)(b) (1) (A) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, a letter brief has been received from Counsel for the General Counsel (General Counsel). Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

¹ This filing date appears as amended at the hearing.

Findings of Fact

I. JURISDICTION

.5 The United States Postal Service (Employer) provides postal services for the United States and operates various facilities throughout the United States, including its facility located at 1300 Evans Avenue, San Francisco, California. The Board has jurisdiction over this matter by virtue of Section 1209 of the Postal Reorganization Act. It is admitted and I find that Employer is, and at all material times has been, an employer within the meaning of Section 2(2), (6) and 10 (7) of the Act and the Postal Reorganization Act.

II. THE LABOR ORGANIZATION INVOLVED

15 It is admitted, and I find that the Respondent Union is and at all times material herein has been a labor organization within the meaning of Section 2(5) of the Act,

III. Alleged Unfair Labor Practices

A. Issues

20 The principal issue in this proceeding is whether the Respondent has violated Section 8(a)(b) (1) (A) of the Act by failing to timely provide requested information to the charging party.

B. Facts

25 The facts are not in material dispute. The Union represents certain postal employees at facilities located in San Francisco, California. The collective bargaining unit is as follows:

30 All full-time and regular part time employees performing work covered by the terms of the collective-bargaining agreement between the National Union and the Employer, effective by its terms for the period from November 21, 2006, through November 20, 2011.

35 Bob Williamson is the president of the San Francisco Local. The Union and/or National Union filed a particular class-action grievance or series of related grievances against the Employer many years ago that had the potential of resulting in substantial sums of back-pay for certain bargaining unit employees. The grievances, over a decade old, have had such a long and convoluted history over the years that, due to the passage of time, changes in personnel, related arbitrations, and other matters, the status of the grievances became simply unknown 40 and likely unknowable. However, the employees who were potential beneficiaries of the grievance continued to hope for a favorable resolution despite the passage of time and the apparent breakdown of the process.

45 From time to time various unit employees, including Ron Lemmons, the charging party, informally requested updated information and a status report on the grievances from Local Union President Williamson and other Union and National Union representatives. Essentially, the employees wanted to know where the grievances were in the system and when, if ever, there was likely to be a resolution. While Williamson and other representatives would verbally respond to their inquiries regarding the convoluted and often obscure procedural history, the employees were not satisfied that the answers provided were adequate. Accordingly, Lemmons prepared two separate written petitions, circulated them among other unit employees, and mailed them to Williamson and other Union representatives on July 18, 2011 and

August 8, 2011. Both petitions were signed by seven unit employees, and are identical except for grievance numbers identifying the particular grievances. Both petitions request all “documents of said grievances to include court orders, appeals and any related documentation of said grievance.” In addition, both petitions designate Lemmons as the individual to whom the documents should be forwarded within ten business days from the date of the request.²

Williamson simply did not respond to the petitions. At the hearing he explained he did not have the requested documents or access to the documents, and did not even know what documents existed as matters underlying the grievances had been handled at the National Union rather than the Local Union level. Further, he had previously, on many occasions, told the employees he was as frustrated as they were over the matter and had shared with them the extent of his knowledge about the matter.³ In this regard, Williamson explained at the hearing:

[I] did not respond to the petition. That’s correct. But there were...many discussions over the long period of time about everybody’s frustration with the process of this case.

Accordingly, receiving no response to the petitions, Lemmons filed the instant charge underlying the complaint herein.

C. Analysis and Conclusions

While it appears that Williamson may have had no further documents to provide to the unit employees that they did not already have, I find that the formal petitions reasonably put Williamson on notice that a written response was expected. At that point Williamson was required to either furnish the requested information, explain why the requested information could not be furnished, or provide whatever explanation that he deemed appropriate under the circumstances in order to fulfill his duty of fair representation as Union president.⁴ Williamson, however, chose to ignore the requests and did not respond, apparently believing that to the extent he was able to compile and furnish any documents, such documents would not be helpful in determining the current status of the grievances.

In *National Association of Letter Carriers, Branch #47*, 330 NLRB 667 (2000), the Board states at fn. 1:

The test for a violation of Sec. 8(b)(1)(A), however, does not depend upon an examination of a respondent’s motivation. Rather, it depends on whether or not the respondent’s statement or conduct would have a reasonable tendency to restrain or coerce an employee in the exercise of statutory rights...

² Neither of the petitions is specifically addressed to Williamson or the Union. The petition that was apparently meant for the Union is headed, “Mr. Gustavo Mareno, Local Maintenance Craft Director.” Williamson was simply sent a copy of this petition. Mareno, according to the testimony of Lemmons, is “a step under” Williamson in the Union hierarchy.

³ Williamson, neither in his answer to the complaint nor at the hearing, took the position that he did not respond to the petitions because they were not specifically addressed to him or to the Union, and his representations and testimony during the hearing supports the conclusion that he understood the petitions to be a matter for his attention.

⁴ Williamson did respond at the hearing herein and in a subsequent letter to Lemmons dated January 28, 2012, attached to the General Counsel’s post-hearing letter brief.

I find that Williamson’s “conduct,” that is, his failure to provide a written response to the petitions, is violative of the Act. Lemmons and the other petitioners were entitled to a written response. Clearly, a union has the duty to furnish such information;⁵ this duty reasonably encompasses the concomitant requirement that a union, at the least, provide its rationale for declining to do so. Accordingly, I find that the Union has violated Section 8(b)(1)(A) of the Act as alleged.

Conclusions of Law and Recommendations

1. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.
2. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and the Postal Reorganization Act.
3. The Respondent has violated Section 8(b)(1)(A) of the Act as alleged.

Remedy

Having found that the Respondent has violated and is violating Section 8(b)(1)(A) of the Act, I recommend that the Respondent be required to cease and desist therefrom, and from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Finally, I shall recommend the posting of an appropriate notice, attached hereto as “Appendix.”

ORDER⁶

The Respondent, American Postal Workers Union, San Francisco Local, AFL-CIO, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing to timely respond in writing to requests for information by unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

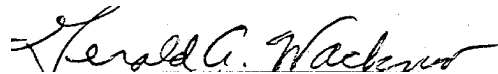
⁵ See *Branch 529, National Association of Letter Carriers, AFL-CIO*, 319 NLRB 879 (1995); *National Association of Letter Carriers, AFL-CIO*, 328 NLRB 952 (1999).

⁶ If no exceptions are filed as provided by Section 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 14 days after service by the Region, post at its union office in San Francisco, California, copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 13, 2011.

(b) Within 21 days after service by the Regional Office, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated: Washington , D.C. April 23, 2012



Gerald A. Wacknov
Administrative Law Judge

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail to timely respond in writing to written requests for information by bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

AMERICAN POSTAL WORKERS UNION,
SAN FRANCISCO LOCAL, AFL-CIO

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

901 Market Street, Suite 400
San Francisco, California 94103-1735
Hours: 8:30 a.m. to 5 p.m.
415-356-5130.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 415-356-5139.